

Petition Request

- Amend 40 CFR 152.25(a), “the Treated Article Exemption”, to clarify that it does not apply to seed for planting coated with systemic pesticides (neonicotinoids) that are intended to kill pests of the plant instead of pests of the seed itself; or
- Alternatively, publish a final, formal Agency interpretation in the Federal Register stating that EPA interprets the exemption in 40 CFR 152.25(a) not to apply to neonicotinoid-coated seeds; and
- Enforce FIFRA’s registration and labeling requirements for each neonicotinoid-coated seed product

Current Status: Neonicotinoid coating of seeds is assessed and registered under FIFRA. EPA has never registered the coated seed itself. While the coated seed bags do not bear FIFRA labeling, they do include a master list of pesticidal active ingredients (AIs) that could be coating the seeds and various health or ecological hazard statements (e.g. re-entry intervals, grazing restrictions, pollinator statements, groundwater advisories, etc.) associated with each AI. The list can include 20 AIs and the precautionary statements can contradict each other. OPP has engaged with registrants in recent years to clean up seed bag tag statements, but discussions and label changes were voluntary. In human health assessments, application of the pesticide to the treated seeds is assessed for commercial mixer/loader/bagger; on-farm liquid seed treatment and seed planter scenarios are also assessed. In ecological risk assessments, risk from treated seed is assessed (accounting for the depth of incorporation of the treated seed). Fugitive dust from planting operations is evaluated by relying upon open literature and reported incidents, but is not quantitatively incorporated into the risk assessment.

Issue: A formal policy or statement articulating OPP’s position on systemic insecticide-coated seeds under the Treated Article Exemption has not been developed to date. While the issue has been raised in recent years via letters to the Agency and litigation, this petition formally requests that OPP state its position on this issue through either a rulemaking or an interpretive statement.

Background

- Section 152.25(a) provides an exemption from all requirements of FIFRA (i.e. registration and labeling) for qualifying articles or substances treated with, or containing a pesticide, if:
 - the incorporated pesticide is registered for use in or on the article or substance, and;
 - the sole purpose of the treatment is to protect the article or substance itself.
- 2000— “Harmonization of Treated Seed Policies and Requirements in Canada and the United States” policy document clarifies that seeds for planting which are treated with pesticides registered in the U.S. are exempt from registration as pesticides where: “for the protection of the [seed] itself means that the pesticidal protection imparted to the treated seed does not extend beyond the seed itself”
- 2012—CFS petition to suspend clothianidin—partial response denied petition. CFS has recently discussed requesting a response to this coated seed petition as part of compelled settlement discussions in on-going litigation (Ellis v. Keigwin) challenging EPA’ petition denial. OSCPP senior management has confirmed that the CFS coated-seed petition will publish for public comment by November 2017.

Policy Considerations— (the following is an initial list and should be further developed with input from other divisions)

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Deliberative Process / Ex. 5

Internal, Confidential, Deliberative, Do Not Cite

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Next Steps

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